



POLICE DEPARTMENT CITY OF NEW YORK

January 9, 2017

MEMORANDUM FOR: Police Commissioner

Re: Sergeant John Albertelli
Tax Registry No. 910972
40 Precinct
Disciplinary Case No. 2015-14839

Detective Matthew Wright
Tax Registry No. 940872
40 Precinct
Disciplinary Case No. 2015-14832

Detective Robert Graves
Tax Registry No. 945352
40 Precinct
Disciplinary Case No. 2015-14835

Charges and Specifications:

Disciplinary Case No. 2015-14839

1. Said Sergeant John Albertelli, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said residence without sufficient legal authority.
P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT
2. Said Sergeant John Albertelli, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he participated in the search of said residence without sufficient legal authority.
P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT
3. Said Sergeant John Albertelli, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to

the good order, efficiency or discipline of the New York City Police Department, in that he detained Person B without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

Disciplinary Case No. 2015-14832

1. Said Detective Matthew Wright, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said residence without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 PUBLIC CONTACT-PROHIBITED CONDUCT

2. Said Detective Matthew Wright, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he participated in the search of said residence without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

3. Said Detective Matthew Wright, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he detained Person B without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

Disciplinary Case No. 2015-14835

1. Said Detective Robert Graves, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered said residence without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

2. Said Detective Robert Graves, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department,

in that he participated in the search of said residence without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

3. Said Detective Robert Graves, on or about November 19, 2014, at approximately 06:00 hours, while assigned to Warrants Section and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he detained Person B without sufficient legal authority.

P.G. 203-10, page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT

Appearances:

For CCRB/APU:

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Civilian Complaint Review Board
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For Respondent Albertelli:

John D'Alessandro, Esq.
The Quinn Law Firm
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For Respondents Wright & Graves:

James Moschella, Esq.
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New York, New York 10279

Hearing Date:

September 1, 2016

Decision:

Disciplinary Case No. 2015-14839

Respondent Albertelli is found Not Guilty.

Disciplinary Case No. 2015-14832

Respondent Wright is found Not Guilty.

Disciplinary Case No. 2015-14835

Respondent Graves is found Not Guilty.

Trial Commissioner: ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on September 1, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The Civilian Complaint Review Board (CCRB) Administrative Prosecutor called CCRB Investigator Jeffrey Mulinelli as a witness, offered a cell phone video recording into evidence, and offered the out-of-court statements of Person A and Person B. Each Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following facts are not in dispute. [REDACTED] was convicted of Aggravated harassment in the second degree² and was sentenced to serve three years on probation. Because [REDACTED] violated a condition of his probation, a New York County Criminal Court judge issued a bench warrant authorizing his arrest [CCRB Exhibit (Ex.) 1]. This bench warrant indicated that [REDACTED]'s residence address was [REDACTED] [REDACTED] New York. A "mug shot" photograph of [REDACTED] was printed on the warrant.

This bench warrant was forwarded to the Manhattan North Warrant Squad and Respondent Wright was assigned to execute this warrant by arresting [REDACTED] When

² New York Penal Law section 240.30.

Respondent Wright went to [REDACTED], he discovered that [REDACTED] no longer resided there. Respondent Wright conducted a computer search of probation records. He discovered a "Probation Detail" which showed that [REDACTED] had told his Probation Officer during 2012 that his residence address was [REDACTED] New York. (CCRB Ex. 2 p. 4)

On November 19, 2014, at about 0600 hours, Respondent Wright, accompanied by Respondent Graves and Respondent Albertelli, who were also assigned to the Warrants Division, went to [REDACTED]. After entering the building, Respondent Graves remained in the lobby while Respondent Wright and Respondent Albertelli walked up to the [REDACTED] floor and stood in front of the door to Apartment [REDACTED]. Respondent Graves rang the bell to Apartment [REDACTED] and then joined Respondent Wright and Respondent Albertelli in front of the door to Apartment [REDACTED]. Person A and Person B were inside Apartment [REDACTED]. Person A heard the doorbell rings, went to the door and conversed with Respondents through the door.

CCRB Investigator Jeffrey Mulinelli testified that he reviewed the "Probation Detail" (CCRB Ex. 2) regarding [REDACTED] that Respondent Wright had obtained and that this document showed that [REDACTED] had not resided at [REDACTED] New York, since 2012. (CCRB Ex. 2 p. 4). Mulinelli testified that Person A was interviewed in person at CCRB on January 15, 2015 and that this interview was recorded. (A transcript of this interview was admitted into evidence as CCRB Ex. 3). Person B was also interviewed in person at CCRB on January 15, 2015 and his interview was also recorded. (A transcript of this interview was admitted into evidence as

CCRB Ex. 4). Person A provided CCRB with a cell phone video that she began recording while Respondents were inside Apartment [REDACTED] (CCRB Ex. 5) Person A also provided CCRB with a photo of the names of tenants which is posted in the lobby of [REDACTED] which shows that "Person A" was the only name listed next to Apartment [REDACTED] on November 19, 2014. (CCRB Ex. 6)

Person A stated at her CCRB interview that she was the tenant of Apartment [REDACTED] during 2014. In the lobby was a doorbell that rang inside Apartment [REDACTED] and there was a second doorbell located just outside the entrance door to the apartment itself. At about 0600 hours on November 19, 2014, when both of these doorbells started ringing, only she and Person B were inside her apartment. Since neither Person A nor Person B was expecting a visitor, they decided not to answer the doorbell rings.

When the doorbells kept "ringing for a very, very, very, long time," Person A went over to the entrance door to the apartment. Person B remained in bed inside the bedroom. Person A pressed the intercom button and asked, "Who is this?" When she received no answer, she looked through the peephole on the door and saw two men wearing civilian clothing. When she again asked who they were, she was told, "You need to open up the door. This is probation. If you don't open up the door, we're going to kick down your door." She asked, "Excuse me, it's who?" The man repeated, "This is probation. If you don't open the door, we're going to kick it down."

Person A ran into the bedroom and told Person B that someone was at the door. Person B got out of bed and went to the door. Person A stood right behind him. Person B asked, "Who is it?" The men repeated that they were probation officers.

Person B then opened the door. Person A saw three men standing outside the door.

Person B told the men twice that no one inside the apartment was on probation.

Person B asked, "Who are you looking for?" The men then "flashed" a paper which Person A saw had a photo of a "Latino male" on it. Person A stated that, "So, as I'm moving backwards, they're moving their bodies forward." Person B had "his leg right there by the door and the officers has both of their right legs to the door and one has a left leg inside the door." Person B told the officers that they "can't just come into my apartment." The officers told them that this was their job and that they had to look.

Person A stated that, "As I'm turning to get ready to go back into the bedroom," the officers "force" themselves "into the apartment." When the officers immediately began "restraining" Person B, Person A turned around. She told them that they had the wrong apartment. One of the officers responded that she should have told them that. She replied that she had already told them that. The officers pushed Person B "to the refrigerator. One officer held his left arm and another officer held his right arm as Person B told them, "Get off of me." When the officers accused them of "not complying," Person A told them, "We don't need to comply. You have the wrong apartment. We don't look Latino. We are African-American people." One officer said, "I don't care. I don't care."

The officers handcuffed Person B and moved him from the kitchen into the living room. Person A "screamed" at them that Person B was "never going to make a, comply with" and to "just shut up so I can call the landlord." Person A again told them, "You have the wrong apartment." One officer said, "You're not listening. We're going to do

what we have to do." The officers asked for Person B ID. When Person B told them, "You never stated who you were," the officers then displayed their shields and Person A told them, "After you're finished searching my apartment, I will need your names and precinct that you're from." The officer whose name was "Matthews" told her, "I have no problem with doing that." One of the officers searched through Person A's bedroom, her closets and even looked into the stove in the kitchen. Person A called 911 and requested an ambulance but by the time it arrived the plainclothes officers had left.

Person A stated that when the officers were still outside the door to her apartment and "flashed" the warrant which had a photo of a "Hispanic" man's "mug shot" on it, Person A recognized the man as someone who "lives on the [REDACTED] floor." As the officers were leaving her apartment, Person A told them that "you need to look down stairs" because the name of the man and his apartment number were on his mailbox in the lobby. Person A agreed with her interviewer that it was right after the officers had flashed the photo on the paper that she had started backing up from the door and they had pushed forward.

Person B, at his in-person recorded CCRB interview on January 15, 2015, stated that on November 19, 2014, at about 0600 hours, he was in bed when Person A, who he referred to as his "wife," told him that someone was ringing the bell and that someone was at the door. Person B went to the door, looked through the peephole, saw three men outside the door, and asked who was there. He was told that "we have a warrant." Person B opened the door and asked, "Who is the warrant for?" He was asked what his name was and he told them his name. He was then asked if he

lived there. He replied that he and Person A lived there. He then asked, "Can I see the picture?" When he was shown a photo of a "Latino," he said, "That's not me and that person don't live here." One of the officers said, "Well, you could be lying to me."

Person B looked down and saw that their "feet was in the door." The officers "mumbled something to each other" and said "just be careful" and "calm down" and then "barged in." They "grabbed" Person B and "just placed " him in the nearby kitchen. Person B was told to calm down. Person B replied, "How can I calm down when I'm being arrested?" He was told that he was not being arrested but they were wrestling him and his arm was being bent as the officers handcuffed him. They told him that they were "doing this for your own safety." Person B told Person A to call 911. Two of the officers placed Person B in a sitting position on the couch and held him there while the third officer went through the apartment searching all of the rooms, including the bathroom and the closets.

Person B stated that when the officers pushed through the doorway, they "came at me" and "tried to rush me." Person A had taken "a couple of steps" back from the door because she did not want the officers to see her unclothed. Person B was "trying to stay sturdy on my feet" as the officers " kept forcing me and trying to knock me down." As two officers "got me," the third officer was trying to tackle me down and I was not letting him take me down to the ground."

When an officer tried to handcuff his wrist to the refrigerator, Person B "didn't let him " do it. Person B "eventually calmed down " and "finally let them 'cuff me like that." He was escorted into the living room and pushed down onto a chair. "45 minutes to an

hour” later, the handcuffs were removed. An officer who identified himself as Detective Wright searched the apartment.

As to the brief cell phone video recorded by Person A (CCRB Ex. 5), since she began recording after Respondents were already inside the apartment; after they had handcuffed Person B and placed him in a sitting position on a couch; and after one of the Respondents had already conducted a search of the rooms inside the apartment; this recording does not depict how Respondents entered the apartment or any of the verbal exchanges that took place at the door before they entered the apartment. The video depicts an agitated Person B loudly directing profane remarks at Respondents and Person A is heard telling Respondents, “You told me to open the door,” and “you searched my house.”

The testimony of the three Respondents will be discussed in the Analysis section of this decision.

Analysis

All three Respondents are charged with the same misconduct. Each Respondent is charged with having entered Apartment [REDACTED], searched the apartment, and detained Person B without sufficient legal authority. Since Respondents were attempting to arrest [REDACTED] on a bench warrant, in executing this bench warrant they were required to comply with the provisions of New York Criminal Procedure Law (CPL) section 120.80 “Warrant of Arrest; when and how executed.”³ CPL 120.80 and

³ See CPL 530.70, “Order of recognizance or bail; bench warrant,” Subdivision 2.

Patrol Guide Procedure No. 208-42 state that an officer who is seeking to enter premises to execute an arrest warrant must reasonably believe that the defendant is at the premises.⁴

The Administrative Prosecutor argued that Respondents should not have gone to [REDACTED] on November 19, 2014 to attempt to arrest [REDACTED] because they possessed insufficient information to reasonably believe that [REDACTED] had returned to his former residence. The Administrative Prosecutor asserted that “even if that address that was on the warrant [REDACTED] was no good or the Respondents went there with negative results, the law demands that Respondents go back to the drawing board before going to [REDACTED] because that information that they had (the Probation Detail) about Apartment [REDACTED] was old” and “under these circumstances the law requires that Respondents rely on recent information and not a two-year-old address...” (Tr. p. 10)

There is no specific formula for what constitutes proper information for forming a reasonable belief that a suspect resides at a particular location and courts have generally held that sufficient information can be obtained through basic inquiries.⁵ Moreover, the law does not place upon an officer seeking to execute an arrest warrant the obligation of conducting a full-scale investigation to confirm the last-known home address of the subject named in the warrant before seeking the subject at that location.⁶ Here, Respondent Wright offered unrefuted testimony that he obtained [REDACTED] arrest record and

⁴ See CPL 120.80(4) and Patrol Guide Procedure No. 208-42, page 1, Arresting Officer, subdivision 3.

⁵ *People v. Fakoya*, 2009 NY Slip Op. 51976 (Sup. Ct. Kings Cty. 2009).

⁶ *People v. Cabral*, 147 Misc.2d 1000, 1004 (Sup. Ct. Kings Cty. 1990).

that he then accessed all of the information concerning [REDACTED] that is contained in the records of the Department's Real Time Crime Center (RTCC), which includes probation and parole information, summons information, complaint reports and domestic incident reports. It was through this RTCC search that Respondent Wright obtained the Probation Detail (CCRB Ex. 2) that listed [REDACTED] as a location where [REDACTED] had resided.

In determining whether an officer had a reasonable basis to believe that a defendant was residing at a particular address, courts have examined both the accuracy of the information possessed by the officer⁷ and the timeliness of the information.⁸ Applying these factors to the facts presented here, Respondent Wright offered unrefuted testimony that the Probation Detail constituted an "active probation report" that was being continually updated by [REDACTED] probation officer. As to the Administrative Prosecutor's argument that the information in the Probation Detail (CCRB Ex. 2) that listed [REDACTED] as [REDACTED] residence was stale and, therefore, unreliable, I find this argument does not give sufficient consideration to the chronology of the address information that [REDACTED] provided to the Probation Department ("Probation") and which is contained in the Probation Detail ("the report"). The report shows that [REDACTED] not only told Probation during 2014 that his residence address was [REDACTED]

⁷ See *People v. Brown*, 56 AD2d 543 (1st Dept. 1977) (Mere fact that name of defendant on warrant was similar to the name of a suspect whose address was known did not provide officers with reasonable belief that defendant was present at that address).

⁸ See *People v. Cabral*, 147 Misc.2d 1000 (Sup. Ct. Kings Cty. 1990) (Residence information the officer is relying on to establish reasonable belief should be of relatively "recent vintage.")

██████████ he had also told Probation during 2011 that he was residing at ██████████
██████████ Since ██████████ told Probation during 2012 that he resided at ██████████
██████████ the report establishes that after moving from ██████████
into ██████████ ██████████ then returned to his previous residence at
██████████ (CCRB Ex. 2 p. 4-5)

Based on this chronology of addresses, I find that after Respondents ascertained
that ██████████ was not residing at ██████████ they had a reasonable basis to believe
that he may have returned to ██████████ to live, since he had
returned to live at ██████████ after he left ██████████

Also, the Administrative Prosecutor did not refute Respondent Albertelli's
testimony that ██████████ was a "more recent" address than the
██████████ address; that ██████████ was not merely an
unverified address that had been provided by ██████████ to an arresting officer, but, rather,
was ██████████ continuing "active probation address" which ██████████ had provided to his
probation officer; and that it was a "much more reliable" address than the ██████████
██████████ address because the Probation Detail showed that ██████████ probation officer had
personally gone to ██████████ and had verified that ██████████
actually resided there.

In determining whether Respondents had a reasonable belief that ██████████ had
returned to live at ██████████ and was residing there on
November 19, 2014, the only relevant information is the information that Respondents
possessed when they arrived at the door to Apartment ██████████ Nonetheless, it is not disputed

that Respondents' belief turned out to be partially correct because Person A told her CCRB interviewer that [REDACTED] was living at [REDACTED] on November 19, 2014. Person A stated at her interview that when Respondents displayed the warrant which had a photo of a "Hispanic" man's "mug shot" on it, Person A recognized the man in the photo as someone who "lives on the [REDACTED] floor" of [REDACTED], although Person A did not tell Respondents this until they were leaving her apartment.

Based on the above analysis, and since there is a general recognition by the courts that overly-technical interpretations of warrant requirements are to be avoided,⁹ I find that Respondents possessed sufficient information on November 19, 2014, to form a reasonable belief that [REDACTED] had returned to live at [REDACTED] even though their belief that he was living in Apartment [REDACTED] proved to be incorrect.¹⁰

I will now address Respondents' entry into Apartment [REDACTED] the search of the apartment, and their detention of Williams.

All of the Respondents testified that based on what Person A said to them at the door and based on her physical movement away from the door, they believed that she had voluntarily consented to allowing them to enter the apartment. Respondents' contention has some support in statements that Person A and Person B made at their CCRB interviews. Person A stated that when Person B opened the door, she started "moving backwards" and that "as I'm turning to get ready to go back into the bedroom," the officers entered the apartment. Person B told CCRB that at the point when the officers

⁹ See *People v. Cabral*, 147 Misc.2d 1000, 1009 (Sup. Ct. Kings Cty. 1990).

¹⁰ See *People v. Paige*, 77 AD3d 1193, 911 NYS2d 176 (3rd Dept. 2010).

entered, Person A had taken “a couple of steps” back away from the door. Although Person B stated that she had moved away from the open door because “she had no clothes on,” it was not unreasonable for Respondents to interpret Person A’s action of moving away from the open door as an invitation to them to enter.

Numerous appellate decisions have held that where the entrance door to a dwelling is opened from inside and an occupant engages in physical movements of the type that Person A described herself as making, officers standing outside the door are justified in interpreting such movements as an invitation to enter.¹¹

However, Person A also told CCRB that Respondents twice told her, “If you don’t open the door, we’re going to kick it dov.n.” If Person A’s hearsay claim is credible, then it must be found that Person A did not voluntarily consent to Respondents’ entry since the New York Court of Appeals has held that consent to enter a dwelling cannot be found to have been voluntarily given where the occupant of the dwelling opens the door after police officers have threatened to kick the door dov.n.¹²

Person A’s credibility must be examined in light of the fact that she told CCRB that when Respondents displayed the warrant which had a photo of a “Hispanic” man’s

¹¹ See *United States v. Griffin*, 530 F.2d 739 (7th Cir. 1976) (leaving door open and stepping back was invitation for officers to enter); *People v. Taylor*, 111 A.D.2d 520 (3d Dep’t 1985) (defendant’s action of stepping back after opening his motel room door amounted to consent for the officers to enter); *People v. Davis*, 120 A.D.2d 606 (2d Dep’t 1986) (defendant’s mother’s action of stepping aside by the entrance door was enough to establish consent to the officers’ entry); *People v. Sabat*, 255 A.D.2d 118 (1st Dep’t 1998) (co-defendant effectively consented to police entering dwelling by stepping from the door after the officer had explained his reason for seeking entry); *People v. Washington*, 209 A.D.2d 817 (3d Dep’t 1994) (tenant tacitly consented to the officers’ entry into her apartment by her movement of stepping aside).

¹² *People v. Loria*, 10 NY2d 368, 223 NYS2d 462 (1961).

"mug shot" on it, she immediately recognized the man in the photo as someone who "lives on the [REDACTED] floor" of [REDACTED], although she did not tell Respondents this until they were leaving her apartment. Since Person A did not appear to testify at this trial, Respondents' counsel did not have the opportunity to question her regarding why she did not immediately tell Respondents that she recognized the man whose photo was on the warrant as someone who "lives on the [REDACTED] floor." Had she done so, her interaction with Respondents might have ended then and there.

I need not reach a finding as to whether to credit Person A's hearsay claim that Respondents threatened to kick the door down, because I find that even if they did not have consent to enter the apartment, their entry was, nonetheless, lawful because they complied with the provisions of CPL 120.80(4) and Patrol Guide Procedure No. 208-42.

CPL 120.80(4) mandates that before entering the premises, the officer "must give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof," and CPL 120.80(5) states that "after giving such notice" of the officer's "authority and purpose," if "he is not admitted," then "he may enter such premises, and by a breaking if necessary."¹³

The factual situation presented here is similar to the factual situation presented in People v. Paige,¹⁴ where New York State Police who were attempting to execute an arrest warrant for a defendant named Laroe, knocked on the door of an apartment they reasonably believed to be Laroe's residence at 8:45 in the morning. They stated through

¹³ Patrol Guide Procedure No. 208-42, page 1, Arresting Officer, subdivision 4, states "(b)reak into premises, if necessary."

¹⁴ 77 AD3d 1193, 911 NYS2d 176 (3rd Dept. 2010).

the door that they were officers and that they had a warrant for Laroe. Paige opened the door partway and told the officers that Laroe was not there. As the troopers began asking questions, Paige looked back into the apartment. The officers told Paige that they believed Laroe was inside the apartment, that they needed to execute the warrant, and that Paige faced arrest if he refused to allow them into the residence. Paige responded that he would not let the troopers in. As one of the troopers turned around to return to their vehicle to retrieve the arrest warrant, Paige closed the door.

Since the troopers believed, based on Paige's statements and actions, that Laroe was inside the residence and that Paige was preventing them from executing the warrant, the troopers kicked the locked door open; entered the apartment; placed Paige in custody; and searched the apartment looking for Laroe. Although Laroe was not there, the officers found cocaine inside a bedroom and they arrested Paige for possessing cocaine and for obstructing governmental administration.

A trial jury found Paige guilty of both arrest charges. An Appellate Division panel affirmed Paige's convictions on both charges. The only dissenting judge specifically mentioned the fact that the troopers never showed Paige the arrest warrant for Laroe because they had inexplicably left it in their car.

Here, similar to the actions of the troopers in the Paige case, Respondents rang the doorbell of an apartment they reasonably believed to be [REDACTED]'s residence at 6:00 in the morning; they identified themselves to Person A as law enforcement officers,¹⁵ and they

¹⁵ Respondent Wright recalled that he identified himself to Person A as a police officer, Respondent Graves recalled that Respondent Wright told Person A that he was a detective, and Respondent Albertelli recalled that they told her that they were police from the Warrant Squad. Person A told CCRB that before Person B came to the door and opened it, Respondents stated that they were probation officers. However,

stated that they had a warrant.¹⁶ Thus, I find that Respondents complied with the provisions of CPL 120.80(4) and Patrol Guide Procedure No. 208-42 which mandate that before entering premises, the officer "must give, or make reasonable effort to give, notice of his authority and purpose to an occupant thereof." Moreover, unlike the troopers in Paige, it is not disputed that after the door was opened partway, Respondents displayed the bench warrant with [REDACTED] photo on it to Person A and Person B.

As noted above, CPL 120.80(5) states that "if after giving such notice" of the officer's authority and purpose "he is not admitted, he may enter such premises, and by a breaking if necessary."¹⁷ Person B told CCRB that after Respondents showed him the warrant which contained a photo of a "Latino," he told Respondents, "That's not me and that person don't live here." Person A told CCRB that before Respondents entered through the door Person B had told them that no one inside the apartment was on probation and that they could not "just come into my apartment." Thus, it is clear that Person B was refusing to allow Respondents to enter the apartment. Since Person B had already opened the door partway, Respondents, unlike the troopers in Paige, did not have to break the door to enter the apartment. They simply pushed the door fully open.

With regard to Respondents' action of restraining and handcuffing Person B, the Paige decision once again is instructive. Based on Paige's refusal to allow the troopers to enter the apartment, the Appellate Division affirmed Paige's conviction for obstructing

Respondents were identifying themselves to Person A through a closed door and her admission that she asked them, "Excuse me, it's who?" indicates that she was having trouble hearing what they were saying.

¹⁶

Person B told CCRB that when he arrived at the door and asked who was there, Respondents immediately told him that they had a warrant.

¹⁷

Subdivision 4 of Patrol Guide Procedure 208-42 merely states "(b)reak into premises, if necessary."

governmental administration (OGA). Since Person B refused to admit Respondents into Person A's apartment, Respondents could have arrested Person B for OGA. The fact that they did not do so does not make their action of temporarily restraining and handcuffing Person B an improper action.

Finally, as to the search of the apartment, just as the troopers in Paige became suspicious that Laroe was hiding inside the apartment when they saw Paige look back into the apartment, I credit Respondent Albertelli's testimony that he decided to personally search the rooms inside the apartment because Person B's angry and belligerent behavior had raised his suspicion that [REDACTED] was hiding in one of the rooms. Respondent Albertelli's testimony that he searched the rooms alone while Respondents Wright and Graves remained with Person B, was supported by Person A's statement to CCRB.

In conclusion, under the circumstances presented here, and because Respondents complied with the provisions of CPL 120.80 and Patrol Guide Procedure No. 208-42, Respondents are found Not Guilty of the charged misconduct.

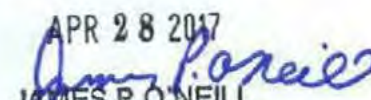
Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

APR 28 2017



JAMES P. O'NEILL
POLICE COMMISSIONER